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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,003	10/26/2000	M. Rigdon Lentz	LEN 101 CIP CON	7721

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EXAMINER
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BIANCO, PATRICIA

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 02/09/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/699,003

Applicant(s)

LENTZ, M. RIGDON

Examiner

Patricia M Bianco

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 December 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-6, 8-10, 12 and 16-20.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8.  
10. ☐ Other: \_\_\_\_\_

  
Patricia M Bianco  
Primary Examiner  
Art Unit: 3762

Continuation of 5. does NOT place the application in condition for allowance because: Applicant presented arguments that the claimed limitations of the invention claimed in the instant application have not been met according to the following rejections: Lentz in combination with Selinsky (1-5, 8, 12 & 20), Lentz & Selinsky in view of Okarma (claims 9, 10 & 16-19), and Lentz & Selinsky in view of Wolpe (claim 6). The examiner disagrees and has maintained the rejections. Applicant argues that Lentz teaches away from selectively removing soluble cytokine receptor molecules and that neither of the removed components taught by Lentz could be a soluble cytokine inhibitor such as soluble TNF receptor (see page 5 of response). Lentz teaches that a blood fractions containing immunosuppressive components of a size less than 1,000,000 Daltons, preferably less than 200,000 Daltons or even 30,000 Da, are removed from the blood to reduce the immunosuppressive components to a level that allows for an immune response in the patient for treatments of ailments (col. 3, lines 39-55 & col. 4, lines 33-55). It is obvious that the immune response that results reduces the amount of tumor (or diseased tissue) in the patient. Further, it would have been obvious to one skilled in the art to remove TNFR since the size of soluble TNFR is within the size of molecules removed by the method and system of Lentz. Further, Selinsky is used to show or teach that the removal of components, such as TNFR1, induces a response at tumor sites, such as apoptosis in tumor cells. With respect to the arguments against Okarma and Wolpe, they are not persuasive (see reasons above).